Filed 4/3/12 In re H.S. CA1/1

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re H.S., a Person Coming Under the Juvenile Court Law.	
SOLANO COUNTY DEPARTMENT OF HEALTH & SOCIAL SERVICES, Plaintiff and Respondent, v. P.S., Defendant and Appellant.	A132452 (Solano County Super. Ct. No. J40513)

Appellant P.S. appeals the juvenile court's order authorizing the Solano County Department of Health and Social Services (Department) the discretion to place her son H.S. in an out-of-county placement. Because the order appealed from has been rendered moot by subsequent events, we dismiss this appeal.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

We have already summarized the underlying facts surrounding this dependency proceeding in a prior opinion in this matter. (*In re H.S.* (Jan. 5, 2012, A131537) [nonpub. opn.].) In brief, H.S. was born to appellant in November 2010. He was placed in protective custody and ordered detained shortly after his birth. A dependency proceeding was initiated in December 2010. After a contested jurisdictional/dispositional hearing, the juvenile court found H.S. came within Welfare and Institutions Code section 300,

subdivisions (b) and (j).[1] Appellant was bypassed for reunification services under section 361.5, subdivision (b), because services had been terminated in connection with a prior dependency proceeding in which her parental rights were ultimately terminated. Additionally, she has a 20-year history of substance abuse along with a history of resisting court-ordered treatment.

On appeal, we upheld the juvenile court's jurisdictional/dispositional determinations, as well as its decision to deny appellant reunification services. We also affirmed the court's order limiting her visits with her son to one per week, and found she had waived the issue of whether the Department failed to exercise due diligence in attempting to locate appropriate relatives for H.S.'s placement. (*In re H.S.* (Jan. 5, 2012, A131537) [nonpub. opn.].)

On April 4, 2011, the Department filed a request to change a court order pursuant to section 388. The Department's social worker indicated that the child was becoming increasingly attached to his current foster mother who was not a concurrent foster home. A secondary adoption worker had reportedly identified two prospective concurrent foster homes for the child, however, both homes were located outside of Solano County. As the juvenile court's dispositional order specified that the child be placed in an approved home within the county, a modification was required in order to allow the county to pursue these placement options.

On June 2, 2011, counsel for the Department advised the court that the proposed out-of-county placement was located in Sacramento and that the prospective foster parents were committed to bringing the child to Solano County for parental visitation. The juvenile court granted the Department's request.

On June 21, 2011, appellant filed a notice of appeal of the June 2, 2011 order authorizing the out-of-county placement.

[1] All further statutory references are to the Welfare and Institutions Code.

DISCUSSION

On appeal, appellant claims the juvenile court abused its discretion in granting the request of the department to change the disposition placement orders to authorize out-of-county placement. She claims the petition failed to state a change of circumstances and was not supported by evidence that a new placement would be in the child's best interest. She also reiterates the arguments raised in her prior appeal regarding the Department's alleged failure to exercise due care to locate a relative placement. We agree with the Department that the instant appeal is moot.

"An appeal becomes moot when, through no fault of the respondent, the occurrence of an event renders it impossible for the appellate court to grant the appellant effective relief." (*In re Esperanza C.* (2008) 165 Cal.App.4th 1042, 1054.) "However, a reviewing court may exercise its inherent discretion to resolve an issue rendered moot by subsequent events if the question to be decided is of continuing public importance and is a question capable of repetition, yet evading review. [Citations.] We decide on a case-by-case basis whether subsequent events in a juvenile dependency matter make a case moot and whether our decision would affect the outcome in a subsequent proceeding." (*In re Yvonne W.* (2008) 165 Cal.App.4th 1394, 1404.)

We have granted the Department's request for judicial notice of various documents generated in this case since the date appellant's notice of appeal was filed. We describe them below.

On July 14, 2011, appellant filed a notice of change of mailing address. The new address is in the state of Missouri. The change is significant in that appellant's primary argument against placing the child out-of-county was that it would interfere with her visitation.

On July 19, 2011, the Department filed a six-month status review report. The report states that H.S.'s father reported appellant had moved and was living in Missouri with her parents. She had not visited with the child since May 16, 2011. Additionally, at this time the child was still living in a foster home located in Solano County, in the same placement he had resided at since December 8, 2010.

The contested six-month review hearing was held on September 22, 2011. The minutes indicate that the juvenile court attempted to contact appellant via telephone with no success. At the hearing, reunification services to H.S.'s father were terminated and the matter was set for a section 366.26 hearing.

On September 28, 2011, the juvenile court filed its findings and orders after hearing. As part of its orders, the court authorized out-of-county placement.

From the documents described above, it appears the Department did not exercise the placement discretion granted to it under the June 2, 2011 order, as the child was still with his in-county placement when the Department's six-month status report was filed, and there is no evidence this circumstance changed prior to the September 22, 2011 hearing. Thus, appellant suffered no prejudice as a result of the order. Additionally, the September 28, 2011 order effectively supersedes the prior order by again authorizing an out-of-county placement. Even if we were to reverse the June 2, 2011 order, relief would be ineffective as the later order would remain in force. Finally, as appellant has voluntarily left the state and is unavailable for visitation with her son we perceive no reason to exercise our discretion to decide this matter on the merits. Accordingly, there is no possibility of effective relief on appeal and the matter is moot.

DISPOSITION

The appeal is dismissed as moot.

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Dondero, J.

We concur:

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Margulies, Acting P. J.

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Banke, J.